



California Regulatory Notice Register

REGISTER 2011, NO. 39-Z

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SEPTEMBER 30, 2011

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

TITLE 2. CALIFORNIA TRANSPORTATION COMMISSION

NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE CALIFORNIA TRANSPORTATION COMMISSION

NOTICE IS HEREBY GIVEN that the California Transportation Commission, pursuant to the authority vested in it by Section 87306 of the Government Code, proposes amendments to its conflict-of-interest code. The purpose of these amendments is to implement the requirements of Sections 87300 through 87302, and Section 87306 of the Government Code.

The California Transportation Commission proposes to amend its conflict-of-interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of Section 87302 of the Government Code.

This amendment newly designates the positions of Principal Transportation Engineer, Supervising Transportation Planner, and Supervising Transportation Engineer. The amendment also adds clarifying language and makes other technical changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the contact person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than November 14, 2011, or at the conclusion of the public hearing, if requested, whichever comes later, to the contact person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than October 30, 2011 by contacting the contact person set forth below.

The California Transportation Commission has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the pro-

posed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the contact person set forth below.

The California Transportation Commission has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the California Transportation Commission must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Rosemary Mejia
1120 N Street, MS-52
Sacramento, CA 95814
(916) 654-4245
Rosemary_Mejia@dot.ca.gov

TITLE 2. DEPARTMENT OF GENERAL SERVICES

PROCUREMENT DIVISION OFFICE OF SMALL BUSINESS AND DVBE SERVICES

NOTICE OF PROPOSED RULEMAKING

The Department of General Services (DGS) proposes to adopt, amend, and repeal the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The DGS proposes to adopt, amend and repeal the California Code of Regulations, Title 2, Division 2,

Chapter 3, Subchapter 10.5, Sections 1896.60–1896.99.120, as applicable, known as the Disabled Veteran Business Enterprise (DVBE) Participation regulations. Modification to these sections are necessary to be in compliance with chaptered legislation including:

- AB 669 (2003)
- SB 1008 (2003)
- AB 4X 21 (2009)
- SB 548 (2009)
- AB 177 (2010)
- AB 2249 (2010)

Legislation chaptered in years 2003 through 2010 require the addition or deletion of regulatory content. This revision restructures and renumbers the regulations. The revisions are necessary since code references, terms, and definitions have become obsolete. These proposed regulations provide clear direction for state departments, stakeholders and the public in understanding program requirements. The current regulations do not provide a sufficient level of detail. The results have sometimes led to inconsistent and subjective interpretation of the DVBE laws. This revise remedies these issues and will enable all stakeholders to better understand the regulations.

PUBLIC HEARING

DGS plans on holding a public hearing from 9:00 a.m. to 3:00 p.m. on November 14, 2011, in the Auditorium of the DGS located at 707 Third Street, West Sacramento, California 95605. The public hearing location is wheelchair accessible. At the public hearing, any person may present his or her statement(s) or argument(s) orally or in writing relevant to the proposed regulation action described in the Informative Digest within this Notice. DGS requests but does not require persons who make oral comments at the public hearing also submit a written copy of his or her testimony.

The DGS will coordinate the availability of a sign language interpreter for the public hearing. Additionally, the DGS will be contracting a recorder/transcriber for the public hearing to ensure all oral comments are recorded.

PUBLIC HEARING — WEBINAR

Additionally, the DGS will arrange a webinar of the public hearing for live participation. The URL will be available at: <https://www.livemeeting.com/cc/dgsotr/join>. The required webinar information is:

Meeting ID: GZBT46
Entry Code: pR:w=4Q2F

If a person has problems participating in the webinar, he or she may contact [access support](#) for assistance.

WRITTEN COMMENT PERIOD

Any interested persons or their authorized representatives may submit written comments relevant to the proposed regulatory action to the DGS. The written comment period closes at **5:00 p.m. on November 14, 2011**. The DGS will consider only comments received at the DGS by that time and date. Comments may also be submitted to the Office of Small Business and DVBE Services (OSDS) email address of:

DVBERegulations@dgs.ca.gov

The alternate method for submission of comments is:

DGS, Procurement Division
Office of Small Business and DVBE Services
Attention: Diana Alfaro, Certification Regulation
Supervisor
707 3rd Street, 1st Floor, Room 400
West Sacramento, CA 95605
Phone: (916) 375–4919
Email: diana.alfaro@dgs.ca.gov
Fax: (916) 375–4950

AMERICANS WITH DISABILITIES ACT

To comply with the nondiscrimination requirements of the Americans with Disabilities Act (ADA), it is the policy of the State to make every effort to ensure its programs, activities and services are available to all persons, including persons with disabilities. For persons with a disability needing a reasonable modification to participate in the public hearing or public comment process, please contact

DGS, Procurement Division
Office of Small Business and DVBE Services
Attention: Diana Alfaro, Certification Regulation
Supervisor
707 3rd Street, 1st Floor, Room 400
West Sacramento, CA 95605
Phone: (916) 375–4919
Email: diana.alfaro@dgs.ca.gov
Fax: (916) 375–4950

The DGS, Procurement Division TTY/TDD (telephone device for the hearing impaired) or California Relay Services Numbers are as follows:

PD TTY: (916) 376–1891

California Relay Service:

Voice: 1.800.735.2922

TTY: 1.800.735.2929

If reasonable modifications are needed at the public hearing, to ensure that the need can be met, individuals are asked to submit their request no later than ten (10) working days prior to the public hearing.

AUTHORITY AND REFERENCES

Authority: §§ 14600 and 14615, Government Code (GC); and §§ 999.5(a) and 999.5(d), Military and Veterans Code (M&VC).

Reference: § 999.5(A), M&VC; § 14838(f), GC; and § 10115(c), Public Contract Code.

INFORMATIVE DIGEST

In establishing the California DVBE Program, it was the intent of the Legislature “*that every state procurement authority honor California’s disabled veterans by taking all practical actions necessary to meet or exceed the disabled veteran business enterprise participation goal of a minimum of 3 percent of total contract value*” (M&VC 999(a)).

“*The administering agency for the California Disabled Veteran Business Enterprise Program is the Department of General Services, except in the case of contracts for professional bond services. The Department of General Services shall consult with the California Disabled Veteran Business Enterprise Program Advocate, appointed by the Department of Veterans Affairs pursuant to Section 999.11, on all matters relating to the California Disabled Veteran Business Enterprise Program*” (M&VC 999.5(a)).

“*The administering agency shall adopt rules and regulations*” (M&VC 999.5(d)).

These revised regulations are intended to honor the intention and commitment of the Legislature to assist DVBEs by communicating to them the rules established for the administration of the DVBE program. The existing regulations do not contain the level of detail as found in the California Code of Regulations, Title 2, Division 2, Chapter 3, Subchapter 8 known as the Small Business (SB) regulations. These proposed DVBE regulations are written in the same format as the SB regulations and provide clarity for firms wanting to participate in the DVBE program. In addition, they will promote consistent application of law.

POLICY STATEMENT OVERVIEW

The purpose of this regulatory package is to incorporate legislative changes effective 2004, 2010 and 2011. The current DVBE regulations have not been updated in over 20 years and contain obsolete and/or outdated

information. They do not communicate clear directions for all stakeholders. This lack of direction has resulted in inconsistent and subjective interpretation of DVBE laws. The proposed regulations provide effective and clear directions on the DVBE program.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DGS has made the following initial determinations:

- Cost or savings to state agencies: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost to local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq.: None.
- Mandate imposed on local agencies or school districts, and, if so, whether or not that mandate is reimbursable: None.
- Assessment of the creation/elimination/expansion of California jobs/businesses:
 - The creation of approximately 50 new jobs. The DGS projects an increase of \$2 million in contracting dollars could flow to DVBEs. The Federal Procurement Technical Assistance Center estimates that for every \$40,000 in contracting dollars, one job is created. For purposes of estimating jobs and given that the amount of State contracting has declined due to the budget shortfall, the DGS used a conservative estimate of \$2 million (\$2 million/\$40,000 = 50) for this projection.
 - An increase and expansion in DVBE certified firms. More DVs may be encouraged to apply for certification.
- This proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Effect on housing costs: None.
- Effect on Private Persons or Businesses: The effect on private persons or businesses is minimal. DVBEs require submission of Federal Tax Returns on an annual basis and support documents, as necessary, due to business structure changes. It is estimated such documentation could have an average cost of \$5. This cost may include copying documents, personnel time and mailing.

- Effect on Small Business: This proposed action may affect only 5% of small businesses who are also DVBE certified.

BUSINESS REPORTING REQUIREMENT

The proposed regulations do not have any reporting requirement for DVBE businesses.

PLAIN ENGLISH DETERMINATION AND OVERVIEW

DVBE Determination —

The proposed regulations will communicate current and clear information to businesses interested in the DVBE program. It will include chaptered legislation implemented in 2004, 2010 and 2011. The proposed regulations parallel the structure of the SB regulations. This format simplifies the administration of both programs and strengthens each program's integrity.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 11346.5, subdivision (a)(13), the DGS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the DGS would be more effective in carrying out the purpose for which the act is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The DGS invites interested persons, or his or her representative to present statements or arguments with respect to alternatives to the proposed regulations at a scheduled hearing or during the written comment period.

CONTACT PERSON

The contact person for inquiries concerning the proposed regulatory action may be directed to:

DGS, Procurement Division
Office of Small Business and DVBE Services
Diana Alfaro, Certification Regulation Supervisor
707 3rd Street, 1st Floor, Room 400
West Sacramento, CA 95605
Phone (916) 375-4919
Email: diana.alfaro@dgs.ca.gov
Fax: (916) 375-4950

Or,

DVBERegulations@dgs.ca.gov

The alternate contact person for submission of inquiries is:

DGS, Procurement Division
Office of Small Business and DVBE Services
Nancy Huth, Certification and Training Supervisor
707 3rd Street, 1st Floor, Room 400
West Sacramento, CA 95605
Phone (916) 375-4935
Email: nancy.huth@dgs.ca.gov
Fax: (916) 375-4950

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DGS will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office as identified under the Contact Person section of this document. As of the date this notice is published in the Notice Register, the rulemaking file consists of:

- Notice of Proposed Rulemaking
- Proposed Text of DVBE Regulations
- Initial Statement of Reasons

Copies of the rulemaking file may be obtained by contacting Diana Alfaro at the address, telephone or email address referenced in the Contact Person section above. Copies of the items listed above may be viewed and downloaded from the DGS website at www.dgs.ca.gov/pd/Programs/OSDS.aspx under the PD Quick Links section.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the DGS may adopt the proposed regulations substantially as described in this notice. If the DGS makes modifications, which are sufficiently related to the originally proposed text of regulations, it will make the modified text with the changes clearly indicated and available to the public for at least 15 days before the DGS adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Diana Alfaro at the contact information reflected above. The DGS will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Diana Alfaro at the contact information reflected above.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTICOUNTY: Employers' Training Resource

A written comment period has been established commencing on **September 30, 2011** and closing on **November 14, 2011**. Written comments should be directed to the Fair Political Practices Commission, Attention: Cyndi Glaser, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review; unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **November 14, 2011**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not

new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Cyndi Glaser, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 327-5966.

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Cyndi Glaser, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 327-5966.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Gov-

ernment Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

STATE: California Transportation
Commission
MULTI-COUNTY: Freeport Regional Water
Authority

A written comment period has been established commencing on **September 30, 2011**, and closing on **November 14, 2011**. Written comments should be directed to the Fair Political Practices Commission, Attention **Cynthia Fisher**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **November 14, 2011**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are

not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code(s) and approve it as revised, or return the proposed code(s) for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to **Cynthia Fisher**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Cynthia Fisher**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Em-

employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the proposed amendment to California Code of Regulations sections 565.1, 565.2, 565.3 and addition of section 565.5 will clarify the requirements for submission of payroll and contribution information through the my CalPERS platform and the method of collecting interest and administrative costs. This proposed regulatory action will enforce employers' compliance with the requirements to submit complete and correct payroll and contribution information in a timely manner.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on **September 30, 2011**, and closing on **November 14, 2011, at 5:00 p.m.** The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; e-mail at James_Croft@calpers.ca.gov; or mailed to the following address:

James Croft, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, California 94229-2702
Telephone: (916) 795-9528

III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The Board has authority to take regulatory action pursuant to Government Code section 20121. The proposal interprets and makes specific reference sections 20283,

20535, 20536, 20537, 20572 and 20615, Government Code.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, employers submit payroll and contribution information to CalPERS via Automated Communication Exchange System (ACES), diskette, tape or reports. Upon implementation of my CalPERS, employers will use the web-based reporting system to submit payroll and contribution information.

The proposed regulations would make regulatory changes to clarify the requirements for submission of payroll and contribution information through the my CalPERS platform and the method of collecting interest and administrative costs. This proposal enforces employers' compliance with the requirements to submit complete and correct payroll and contribution information in a timely manner.

The amendment to section 565.1 will require employers to submit payroll and contribution information using the CalPERS reporting system and requires that errors in payroll and contribution information be corrected within 60 calendar days of notice from CalPERS. With the my CalPERS system, employers will be notified of errors upon submission of the payroll information.

The amendment to section 565.2 will authorize CalPERS to bill an employer for insufficient contributions and clarifies that interest will be charged on amounts due that are not paid within 30 calendar days of the billing notification. The my CalPERS system can determine the date payroll contributions are received and can assess interest upon failure to submit payroll contributions as due to the system.

The amendment to section 565.3 will replace the reference to "late reporting" with "incomplete or erroneous payroll and contribution information." The amendment further clarifies that the cost assessment will be billed each month until the posted payroll and contribution information is complete and correct.

The addition of section 565.5 will clarify the method of collecting administrative costs and provide that if an employer fails to pay or dispute an amount due within 30 calendar days of notice, the employer shall be deemed to have agreed with the amount due, and to have consented to collection by CalPERS through deduction from the employer reserve account or by demand for payment.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to the California Public Employees' Retirement Law.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action imposes no mandate on local agencies and school districts.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action does not impact costs or savings for any state agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500, et seq.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action does not impact any federal funding to the state.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of businesses in California to compete with businesses in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. **IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA:** The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no effect.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective,

and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Sharen Scott
Customer Account Services Division
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701
Telephone: (916)795-2558
E-mail: Sharen_Scott@CalPERS.ca.gov

Please direct requests concerning processing of this regulatory action to James Croft, CalPERS Regulations Coordinator, at the address shown in Section II, or (916) 795-9528 (James_Croft@CalPERS.ca.gov).

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator. The Final Statement of Reasons can be obtained, once it has been prepared, by written request to James Croft, Regulations Coordinator, at the address shown in Section II.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed regulations after the public comment period has closed. It may amend the proposed regulations as modified, if the changes are sufficiently related to the original text, so the public could have anticipated them. If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the text will be mailed to all persons who submitted written comments, who testified or sub-

mitted written comments at the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

XIII.

One can access the regulatory material regarding this action at CalPERS' website <http://www.calpers.ca.gov/index.jsp?bc=/about/leg-reg-statutes/regulatory/current/home.xml>.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **November 17, 2011**,
at 10:00 a.m.
in the Costa Mesa City
Council Chambers,
77 Fair Drive, Costa Mesa,
California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **November 17, 2011**,
following the Public
Meeting,
in the Costa Mesa City
Council Chambers,
77 Fair Drive, Costa Mesa,
California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **November 17, 2011**,
following the Public
Hearing,
in the Costa Mesa City
Council Chambers,
77 Fair Drive, Costa Mesa,
California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders, General Industry Safety Orders, Petroleum Safety Orders, and the Ship Building, Ship Repairing, and Ship Breaking Safety Orders of the California Code of Regu-

lations, as indicated below, at its Public Hearing on November 17, 2011.

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 4
Article 4, Section 1532.1
Article 15, Section 1615.7

GENERAL INDUSTRY SAFETY ORDERS

Division 1, Chapter 4, Subchapter 7
Article 9, Section 3361
Article 101, Sections 5042, 5044, 5045, 5047, and 5049
Article 107, Section 5144
Article 109, Sections 5191, 5198, and 5209

SHIP BUILDING, SHIP REPAIRING, SHIP BREAKING SAFETY ORDERS

Division 1, Chapter 4, Subchapter 18,
Article 4
Section 8355

Federal Final Rule, Standards Completion Project—Phase III (Horcher)

2. **TITLE 8:** **PETROLEUM SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 14
Article 2, Section 6505
Article 35, New Section 6625.1
Article 46, Section 6651

Diesel Engine Runaway Protection

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 4
Article 4, Section 1532.1
Article 15, Section 1615.7

GENERAL INDUSTRY SAFETY ORDERS

Division 1, Chapter 4, Subchapter 7
Article 9, Section 3361
Article 101, Sections 5042, 5044, 5045, 5047, and 5049
Article 107, Section 5144
Article 109, Sections 5191, 5198, and 5209

SHIP BUILDING, SHIP REPAIRING, SHIP BREAKING SAFETY ORDERS

Division 1, Chapter 4, Subchapter 18,
Article 4
Section 8355

Federal Final Rule, Standards Completion Project—Phase III (Horcher)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations addressing Standards Improvement Project, Phase III, on June 8, 2011, as 29 Code of Federal Regulations, Parts 1910 (general industry), 1915 (shipyards), 1917 (marine terminals), 1918 (longshoring), 1919 (gear certification), 1926 (construction) and 1928 (agriculture). The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 76, No. 110, pages 33590–33612, June 8, 2011, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

The proposed regulations address updated requirements for respiratory protection as it pertains to use and maintenance of breathing gas containers; safe operating practices for chain and wire rope slings including the labeling of chains, slings and shackles; employee lead exposure monitoring; medical removal protection, and construction industry material handling (rigging) equipment.

The proposed regulations are substantially the same as the federal standards; therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written comments and oral comments at the public hearing is to: (1) identify any clear and compelling reasons for California to deviate from the federal standard, (2) identify any issues unique to California related to this proposal which should be addressed in a subsequent rulemaking, and (3) solicit comments on the proposed effective date. The responses to comments will be available in the rulemaking file on this matter and will be limited to the above areas.

The regulations may be adopted without further notice even though modifications may be made to the orig-

inal proposal in response to public comments or at the Board's discretion.

COST ESTIMATES OF PROPOSED ACTION

According to Section IV of the Preamble to the Final Rule (page 33602), Federal OSHA has determined that the final standard is not an economically significant regulatory action under federal Executive Order 12866. This rule has no costs and will lead to cost savings to regulated entities. The final rule like the proposed rule deletes and revises a number of provisions in existing OSHA standards and is technologically feasible because it removes or reduces current requirements upon employers. In the case of this proposal a number of issues amount to technical clarifications consistent with Federal definitions. In other cases, the proposal consists of new language consistent with comparable federal language to ensure that California will be at least as effective as federal OSHA for those issues.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8:** **PETROLEUM SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 14
Article 2, Section 6505
Article 35, New Section 6625.1
Article 46, Section 6651
Diesel Engine Runaway Protection

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) staff initiated this rulemaking as the result of Petition No. 516, filed on July 8, 2010, by Mr. Jogen Bhalla, Vice President, AMOT Inc. The petition was granted by the Board on October 21, 2010, to the extent that Board staff convened a representative advisory committee (committee) to consider the petitioner's request to mandate the use of automatic shut-off devices for diesel powered engines/equipment and address the hazards associated with the failure to control runaway diesel engines. The petitioner opined that the overrun of diesel powered equipment constitutes a source of ignition capable of igniting a gas and/or vapor cloud of flammable substances from an open well bore such as oil and natural gas which could lead to fire and explosion. Having employees run to haphazardly block

off the diesel ignition source in the event of a runaway condition and conflagration is both dangerous and unreliable. Therefore, the petitioner proposed Title 8 be amended to require automatic diesel overrun control devices be installed on all mobile and stationary diesel powered equipment and vehicles that constitute a source of ignition.

As directed by the Board, staff convened a committee meeting which included the petitioner, labor and management representatives on February 8, 2011. The committee considered the petitioner's request and supporting documentation which included various American and Canadian consensus standards, accident statistics and testimony and comments from committee members and the petitioner.

At present, the Petroleum Safety Orders—Drilling & Production (PSO—D&P) addresses definitions and clarifications of terms used in the PSO—D&P but does not define or clarify some of the key terms used in the proposed text. Other sections contain general requirements for overspeed protection on stationary internal combustion engines driving air or gas compressors. However, they do not specifically address requirements for air intake shut-off valves to control runaway conditions for diesel engines. The PSO—D&P addresses emergency stop devices on prime movers including air-intake shutoff valves for diesel engines (prime movers) for drilling rigs and well servicing machinery but does not regulate diesel engines used exclusively as vehicular diesel engines nor is there a specific requirement for automatically actuated emergency stop devices.

Section 6651 regulates the safe loading and unloading of flammable liquids into or from tank trucks and trailers. Subsection 6651(c) is a performance standard that requires the engines to be stopped or if the engine is used to transfer the flammable liquids, subsection (c) requires that any released flammable vapors be prevented from reaching the engine. However, Section 6651 does not address the specific hazards associated with diesel engine runaway conditions.

This proposed rulemaking action addresses definitions, diesel engine runaway protection within 50 feet of an open well bore through selection by the employer of one or more precautionary measures, and addresses loading and unloading operations into which diesel powered tank, vacuum trucks and auxiliary equipment are operated during the loading of unprocessed fuel.

This proposal contains additional non-substantive, editorial, reformatting of subsections, and grammatical revisions. Non-substantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed.

§6505. Definitions.

The proposal adds six definitions of terms consisting of: "Actuation Test," "Air intake shut-off valve," "Open well bore," "Prime Mover," "Remote Control," and "Runaway." The proposed definitions will clarify the intended meaning of the proposed standards and ensure proper understanding of the scope and application of the proposed requirements. The proposed definition for "Prime Mover" addresses confusion expressed by the advisory committee members with its meaning and scope in existing regulations of Article 52, so titled. The definition of "Prime Mover" is consistent with a similar definition used in Section 3941 of the General Industry Safety Orders and the Federal OSHA prime mover definition contained in 29 CFR, Section 1910.211(f)(9). All other proposed definitions are consistent with commonly used oil and gas drilling and production industry terminology.

§6625.1. Diesel Engines Runaway Protection.

The proposal adds Section 6625.1 specifically to address the hazards associated with diesel engine runaway. New subsections (a) and (b) prohibit the operation of stationary, vehicular and mobile diesel engines within 50 feet of the open well bore or other source of ignitable gas or vapor unless at least one of the five conditions specified in subsections (b)(1) through (5) are met. The five conditions under which a diesel engine can operate within the 50-foot safety zone prevent diesel engine runaway conditions by either blocking the oxygen/fuel mixture from entering the engine as in subsections (1) and (2), providing gas and vapor free combustion air as set forth in subsection (3), displacing the oxygen/fuel mixture from the engine with an inert gas as set forth in subsection (4), or using any other approved (as per GISO Section 3206) and effective method or device designed to stop a diesel engine runaway as stipulated by subsection (5).

The proposed subsections will ensure the safe operation of diesel engines within 50 feet of an open well bore and other existing sources of ignitable gas or vapor where statistics show the risk of vapor/gas ignition is great. The choice of the five conditions in subsection (b) will provide employers with flexibility to tailor their compliance strategy effectively and efficiently. The proposal is consistent with Section 6521 in the Petroleum Orders and Section 5416 in the General Industry Safety Orders which mandate eliminating sources of ignition and conducting air monitoring for flammable gases and vapors in environments where a flammable atmosphere exists. The proposed 50 feet safety zone in subsection (a) is consistent with requirements in Section 6684 in these safety orders for spark control systems for internal combustion engines, including diesel engines, within 50 feet of drilling wells.

Proposed subsection (c) requires actuation testing for air intake shut-off valves at weekly intervals for rig diesel engines and at least monthly intervals for all other diesel engines. Additionally, subsection (c) establishes a recordkeeping requirement for the actuation tests pursuant to Section 3203(b)(1) of the General Industry Safety Orders.

Proposed subsection (c) will ensure that air intake shut-off valves and their controls function properly to prevent and control the fire and explosion risk and the employer can demonstrate that the required system maintenance is being performed and system integrity is preserved.

Proposed subsection (d) requires that a diesel engine experiencing runaway conditions be shut-down and the area affecting the safe operation of the diesel engine is free of flammable gas or vapor before the diesel engine is restarted.

The proposed text in subsection (d) will ensure that the condition that caused the diesel engine to overspeed (runaway) has been abated before the diesel engine is operated.

§6651. Loading and Unloading Operations.

The proposed new subsection (d) addresses the hazards associated with diesel engine runaway conditions for tank truck and vacuum truck diesel engines or auxiliary diesel engines used in the transfer of a flammable liquid. Proposed subsection (d) would prevent diesel engine runaway conditions by requiring the subject diesel engines to comply with Sections 6625.1(b) through (d).

Subsection (d) will ensure the safe operation of tank truck and vacuum truck diesel engines when transferring flammable liquid and is consistent with Section 5416 in the General Industry Safety Orders which mandates the elimination of sources of ignition and air monitoring for flammable gases and vapors in environments where the concentration of the flammable gases or vapors exceeds or may reasonably be expected to exceed 25 percent of the lower explosive limit.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The proposal provides optional methods for controlling the diesel overrun hazard when work is performed

within 50 feet of an open well bore and addresses record keeping and vacuum and tanker truck operations. Drilling and production employers have likely already implemented one or more proposed control methods, such as airborne monitoring. The cost of implementing one or more of the proposed methods, maintaining inspection records and controlling vacuum truck hazards is insignificant compared to overall drilling and production operation costs.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the regulations do not constitute a "new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and

health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than November 11, 2011. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on November 17, 2011, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written

comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER CALIFORNIA CERTIFICATION PROCEDURES FOR LIGHT-DUTY ENGINE PACKAGES FOR USE IN LIGHT-DUTY SPECIALLY CONSTRUCTED VEHICLES FOR 2012 AND SUBSEQUENT MODEL YEARS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of a regulation and related certification procedures for new engines for use in light-duty specially constructed vehicles.

DATE: November 17, 2011

TIME: 9:00 a.m.

PLACE: California Environmental Protection
Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., Thursday, November 17, 2011, and may continue at 8:30 a.m., on Friday, November 18, 2011. This item may not be considered until Friday, November 18, 2011. Please consult the agenda for the hearing, which will be available at least 10 days before Thursday, November 17, 2011, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of California Code of Regulations, title 13, sections 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, and 2218, which incorporate by reference “California Certification Procedures for Light-Duty Engine Packages for Use in Light-Duty Specially Constructed Vehicles for 2012 and Subsequent Model Years.”

The following documents are also incorporated by reference:

- “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” (last amended September 27, 2010)
- “California Evaporative Emissions Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles” (last amended December 2, 2009)
- “Procedures for Reporting Failure of Emission-Related Components,” (last amended December 3, 2009)

Background:

The California Air Resources Board (ARB or the Board) staff is proposing an optional regulation and associated certification procedures for new light-duty engines for use in specially constructed vehicles (SPCNS, such as kit cars). The proposed regulation and procedures would ensure that certified engine packages, when placed into any SPCNS, would meet new vehicle emission standards, and be able to meet Smog Check requirements.

The proposed regulation and procedures would not impose any requirements on engine manufacturers or hobbyists. Certifying engine packages via the new regulation and procedures would be optional for engine manufacturers, and hobbyists would not be required to choose, purchase or utilize certified engine packages.

SPCNSs are an integral part of California’s car culture. Kit car hobbyists often use uncontrolled crate engines, and register their vehicles by utilizing a provision in the California Health and Safety Code, section

44017.4 (enacted by Senate Bill 100 (SB 100) 2001, Johannessen), which allows a hobbyist to choose the model year for their vehicle and thereby exempt their vehicle from Smog Check requirements. Staff believes the proposed regulation and procedures would provide hobbyists a low emitting option when choosing an engine for their SPCNS. Staff’s proposal will not affect the current registration process for SPCNSs, nor change the 500 vehicle limit or model year assignment process allowed under SB 100.

The proposed regulation and certification procedures would require certified engine packages to meet current Low Emission Vehicle (LEV II) exhaust and evaporative standards. To receive certification, manufacturers would be required to demonstrate emissions compliance on a worst-case vehicle. The engine package would be required to come with an engine and controller, including software and calibration to ensure the certified engine package remains as low-emitting as possible. Additionally, the package would be required to come with exhaust and evaporative emission components such as intake and exhaust manifolds, engine controller, catalytic converter, an evaporative canister and detailed instructions for the proper installation of the package.

Staff is also proposing to create a system of checks and balances for shops that aid hobbyists in installing these certified engine packages into their vehicles. Hobbyists would not be required to have an installer install their engines. However, if a hobbyist were to choose that route, the installer would be required to warrant the engine’s proper installation, and maintain a paper trail on each vehicle.

COMPARABLE FEDERAL REGULATIONS

The Federal Environmental Protection Agency’s (U.S. EPA) does not have regulations applicable to motor vehicle engines used in SPCNSs. However, the U.S. EPA’s current kit car policy, (available at <http://www.epa.gov/oms/imports/kitcar.htm>) issued on July 8, 1994, clarifies U.S. EPA’s policy concerning the regulation of imported and domestically produced kit cars and kit car packages.

U.S. EPA’s policy only applies to kits or assembled kit cars. It provides that the engine of a kit car must be used or used and rebuilt, in order for U.S. EPA to consider an assembled kit car or complete kit car package to be a rebuilt vehicle of a previously certified configuration that is covered by the certificate of conformity that U.S. EPA issued for that certified configuration.

However, U.S. EPA does not have a mechanism for preventing kit cars not in compliance with their policy from being registered and driven. Hence, kit cars not

complying with U.S. EPA's policy are regularly registered in California and other states.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a staff report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Proposed Regulation and Certification Procedures For Light-Duty Engine Packages For Use In Light-Duty Specially Constructed Vehicles For 2012 and Subsequent Model Years."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on Wednesday, September 28, 2011. Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Anna Wong, Air Pollution Specialist, (916) 323-2410, or Ms. Kimberly Heroy-Rogalski, Manager, (916) 327-2200.

Further, the agency representative and designated back-up contact persons, to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at www.arb.ca.gov/regact/2011/spcn11/spcn11.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create substantial costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. It is unlikely a representative private person or business would necessarily incur costs in reasonable compliance with the proposed action. Staff's proposal is an optional certification procedure for engine manufacturers. Staff expects most manufacturers choosing to certify engine packages via the new regulation and procedures to create engine packages based on previously certified vehicles, which would minimize the need for additional certification testing and minimize such certification costs. To the extent any certification costs are passed onto the consumer, end users would not be required to purchase these engines.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action could potentially affect small businesses, especially installers of certified engine packages into SPCNSs. Installers who choose to install these certified engine packages would incur costs due to increased reporting requirements and providing a one year/12,000 mile warranty.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California. Engine manufacturers certifying engine

packages for SPCNSs through staff's proposed procedure would need to report the number of engines sold each year in California. Additionally, shops that install these certified engine packages into SPCNSs would be required to report to ARB the number of certified engine packages installed in SPCNSs each year.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on Monday, October 3, 2011. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after Monday, October 3, 2011 and received no later than 12:00 noon on Wednesday, November 16, 2011, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento,
California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

New Feature

You can now sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to: <http://www.arb.ca.gov/board/on line-signup.htm>.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time

to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 43000, 43100, 43101, 43102, 43104, 43105. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 39002, 39003, 43000, 43013, 43100, 43101, 43102, 43104, 43105, 43106, 43205, and Vehicle Code section 580.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as

soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220 and 240 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205 and 206 of said Code, proposes to amend Section 7.00 and subsection (b)(68) of Section 7.50, Title 14, California Code of Regulations, relating to Oroville-Thermalito Complex Regulations For Take of Non-Indigenous Coho Salmon.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Fish and Game (Department) is proposing an amendment to the General District sport fishing regulations for the Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River between the Diversion Pool Dam and Fish Barrier Dam. This proposal would expand the take of non-indigenous Coho salmon, which are currently limited to Lake Oroville proper, to include the Oroville-Thermalito Complex and the Feather River between the Diversion Pool Dam and Fish Barrier Dam.

Current Valley District regulations allow take of non-indigenous Coho salmon only in Lake Oroville. Bag and possession limits for the Oroville-Thermalito

Complex and the Feather River between the Diversion Pool Dam and Fish Barrier Dam are already under the current Valley District regulations and would not require any special fishing regulations for these waters.

The Department and Department of Water Resources (DWR) have been working cooperatively to develop a successful cold water fishery in Lake Oroville. This is based, in part, on a requirement in DWR's FERC license of the Oroville Hydroelectric facility to provide a cold water fishery. DWR and the Department began stocking on an experimental basis hatchery raised non-indigenous Coho salmon into Lake Oroville in 2002. Based on the success of the non-indigenous Coho salmon fishery in Lake Oroville and the Lake Oroville Coho Salmon Stocking Risk Assessment (DWR, 2004) the Department approved stocking of hatchery raised non-indigenous Coho salmon into Lake Oroville with the stipulation that all stocked Coho be marked with an adipose fin clip and a coded wire tag.

There has been growing evidence over the last few years that planted non-indigenous Coho salmon are escaping from Lake Oroville. Recent boat-based electro-fishing surveys conducted in the Oroville-Thermalito Complex showed the highest concentration of non-indigenous Coho salmon closest to Lake Oroville Dam. Escapement appears to be greatest during wet years though some escapement seems to happen in all years. This proposal would allow harvest by the existing popular Oroville-Thermalito Complex fishery of non-indigenous Coho salmon that escape Lake Oroville.

Concern has been raised over the potential impact that escaped non-indigenous Coho salmon could have on native salmonids in either the anadromous waters of the Feather River or in other streams and rivers with runs of native Coho salmon. Of particular concern is the potential for interbreeding with native Coho salmon stocks. Although the likelihood of the planted fish out-migrating, surviving predation and ocean fisheries, straying, and successfully spawning is extremely low, the current status of native stocks makes this a real concern. In response the Department is now requiring all non-indigenous Coho salmon planted in Lake Oroville to be triploid (sterile). In 2011, the Department approved the first experimental plant of 18,000 triploid non-indigenous Coho salmon into Lake Oroville.

Planting triploid non-indigenous Coho salmon will alleviate the potential for interbreeding in future years and this proposed regulation amendment will help continue the non-indigenous Coho salmon fishery in the Oroville-Thermalito Complex. As data show the non-indigenous Coho salmon density rapidly decreasing with distance from the dam, and a vast majority of the flow from Lake Oroville goes through the Oroville-Thermalito Complex, this proposed regulation amendment targets escaped non-indigenous Coho salmon

where they are most likely to be encountered. Due to extremely low numbers, a non-indigenous Coho salmon fishery is not warranted in the anadromous reaches of the Feather River and these fish are not anticipated to impact native fishes either through competition or predation.

Current Regulations

Section 7.00, CCR, Title 14, allows the take of non-indigenous Coho salmon in only Lake Oroville under the General District bag and possession limit of 5 fish for the Valley District.

Proposed Regulations

Section 7.00, CCR, Title 14, will be revised to expand the take of non-indigenous Coho salmon to the Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River between the Diversion Pool Dam and Fish Barrier Dam. The current General District bag and possession limit of 5 fish for the Valley District will remain in place.

This change will allow for take of non-indigenous Coho salmon to reduce the possible threat to the anadromous waters of the Feather River over the near term until the diploid stocks already in the lake are depleted, and will provide for increased opportunity for the public over the long term if and when some triploid fish escape in the future.

Subsection (b)(68) of Section 7.50, CCR, Title 14, will be revised to clarify current enforcement practices and public understanding that all non-anadromous waters of the Oroville-Thermalito Complex and areas of the Feather River above the Fish Barrier Dam are subject to the General District regulations for the Valley District.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the Beach Resort Monterey, 2600 Sand Dunes Drive, Monterey, California, on Thursday, October 20, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all actions relevant to this action at a hearing to be held at the Veteran's Memorial Building, 112 West Cabrillo Boulevard, Santa Barbara, California, on Thursday, November 17, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 10, 2011, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 14, 2011. All comments must be received no later than November 17, 2011, at the hearing in Santa Barbara, CA.** If you would like co-

pies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Scott Barrow, Fisheries Branch, phone (916) 445-7600, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes will offer more fishing opportunities with no adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (hereafter "Board") is proposing to add regulations described in the Informative Digest below. Any person interested may present statements or arguments relevant to the action proposed at a hearing to be held at the Hilton Glendale located at 100 W. Glen

Oaks Boulevard in Glendale, at 10:00 a.m., on Thursday, November 17, 2011. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Board of Chiropractic Examiners at its office no later than 5:00 p.m. on Monday, November 14, 2011.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 1000–4(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii) and to implement, interpret or make specific Section 1000–4(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii); the Board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Chiropractic Initiative Act Section 1000–4(b) authorizes the Board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

This proposal would make regulatory changes to strengthen the Board's enforcement authority by clarifying patient record retention requirements to ensure inactive and active patient records are maintained in accordance with all state and federal laws and enhance consumer protection by incorporating the Board's newly adopted requirements for signed written informed consent in patient records.

The Board is proposing to make the following changes:

1. Amend Section 318(a)

This proposal would amend Section 318(a) to clarify that all inactive and active patient records must be maintained by the licensed chiropractor for five years from the date of the doctor's last treatment of the patient unless state or federal laws require a longer period of retention. This proposal would further require doctors of chiropractic to include the signed written informed consent, as specified in Section 319.1, in active and inactive patient records.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non-discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: None.

Business Impact:

The Board initially determined that the proposed regulation would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

This proposal will only clarify the patient record retention requirements and would not impose any additional costs to the chiropractor.

Effect on Housing Costs: None.

Effect on Small Business:

The Board has determined that this regulatory proposal will not impose a significant cost to small businesses.

This proposal will clarify patient record retention requirements for doctors of chiropractic and include the informed consent requirements imposed in Section 319.1.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative that is considered or that has otherwise been identified

and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has all the information available upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the initial statement of reasons, and all the information, upon which the proposal is based, may be obtained, upon written request, from:

Dixie Van Allen, Program Analyst
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833
(916) 263-5329
Fax (916) 263-5369
dixie.vanallen@CHIRO.ca.gov

AVAILABILITY AND LOCATION OF
THE FINAL STATEMENT OF REASONS
AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the web site, www.chiro.ca.gov.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Dixie Van Allen, Program Analyst
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, California 95833
Telephone: (916) 263-5329
Fax: (916) 263-5369
E-mail: dixie.vanallen@CHIRO.ca.gov

The backup contact person is:

Name: Robert Puleo, Executive Officer
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833
Telephone: (916) 263-5355
Fax: (916) 263-5369
E-mail: chiro.info@chiro.ca.gov

Web Site Address: Materials regarding this proposal can be found at www.chiro.ca.gov.

TITLE 17. DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULEMAKING

California Code of Regulations
DPH-06-024E

NOTICE IS HEREBY GIVEN that the California Department of Public Health (Department) has, under the authority granted by section 131200 of the Health and Safety Code, amended section 6540 of the California Code of Regulations regarding fees related to testing for genetic disorders. Section 124977(d)(1) of the Health and Safety Code provides that for the purposes of the Administrative Procedure Act, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. This regulation is now in effect. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent.

PUBLIC HEARING

Date and Time: November 17, 2011 — 10:00 a.m. to 12:00 noon
Place: 1500 Capitol Ave, Sacramento, California 95814
Purpose: To hear comments about this action.

An agenda for the public hearing will be posted at the time and place of hearing designated above. For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of written public hearing materials into Braille, large print, audiocassette, or computer disk. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

To request such services or copies of materials in an alternate format, please write to Dave Rappolee, Office

of Regulations, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, call (916) 445-9387, email at David.Rappolee@cdph.ca.gov, or use the California Relay Service by dialing 711.

PUBLIC COMMENT PERIOD

The public comment period will close at 5 p.m. on November 17, 2011. Any person may submit public comments in writing (by mail, fax, e-mail, or in person) regarding the emergency changes. To be considered by the Department, comments must be submitted to the Department, Office of Regulations as follows:

1. By email to: regulations@cdph.ca.gov;
2. By fax transmission to: (916) 440-5747;
3. By mail to: Office of Regulations, P.O. Box 997377, Sacramento, CA 95899-7377; or
4. Hand delivered to: 1616 Capitol Avenue, Sacramento, CA 95814

All submitted comments should contain the regulation package identifier DPH-06-024E.

CONTACT INFORMATION

Questions regarding the subject matter of the regulation should be directed to:

Genetic Disease Screening Program
Sara Goldman, M.P.H., Chief
Program Standards and Quality Assurance
Branch
California Department of Public Health
(510) 412-1463

Questions regarding the regulatory process described in this notice should be directed to:

Marylyn Willis, Staff Services Manager II
Office of Regulations
(916) 440-7733

In the event the contact person named above is unavailable, inquiries should be directed to the following back-up person:

David Rappolee, Staff Services Manager I
Office of Regulations
(916) 445-9378

FISCAL IMPACT ESTIMATE

- A. Fiscal Impact on Local Government: None.
- B. Fiscal Impact on State Government: \$770,900.
- C. Fiscal Impact on Federal Funding of State Programs: \$770,900.
- D. Fiscal Impact on Private Persons or Businesses Directly Affected: The cost impacts known to the

Department at the time this regulation was adopted, that a representative private person or business would necessarily incur in reasonable compliance with this regulation, are as follows: cost increase of \$7 per pregnancy in the screening test fee for certain genetic diseases, for those businesses providing health coverage to pregnant women, or to the pregnant woman if she is not covered by health care insurance.

- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

LOCAL MANDATE

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, and that there are not any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the regulations would not have a significant, state-wide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENTS OF EFFECTS ON JOBS AND/OR BUSINESS CREATION, ELIMINATION, OR EXPANSION

The Department has determined that the regulations will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

EFFECT ON SMALL BUSINESS

The Department has determined that the regulation will not affect small business. None of the businesses affected by this regulation meet the criteria of small business established by section 11342.610 of the Government Code.

EFFECT ON HOUSING COSTS

The Department has determined that the regulations will have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the

attention of the Department would be more effective in carrying out the purpose of the emergency action or would be as effective and less burdensome to affected private persons than the emergency action.

AVAILABILITY OF EMERGENCY TEXT AND INITIAL STATEMENT OF REASONS

The Department has made available the regulation text and the Initial Statement of Reasons (ISOR) for the emergency regulations on the Department's website at <http://www.cdph.ca.gov>. Upon completion of the rule-making process, the rulemaking file for this regulatory action, which contains those items and all information on which the emergency action is based, will be available to the public upon a request submitted to the Department.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may finalize the emergency regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department finalizes the regulations as revised. Copies of modified regulation text may be obtained from the Department's website at <http://www.cdph.ca.gov>.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Background: In July of 2007, the California Department of Public Health was created pursuant to legislation (SB 162, Ch. 241, Stats. 2006) which separated the medical coverage and public health care functions previously consolidated in the former Department of Health Services (now called Department of Health Care Services), and assigned the public health functions to the newly established Department of Public Health (Department).

Department of Public Health Genetic Disease Screening Program (GDSP): Under authority of sections 124975 through 125119.5 of the Code, the Department has established several programs for testing for genetic disorders. One such Departmental Program, the GDSP, provides, under authority of section 125050 et seq. of the Code, for the testing of the mother's blood, and, in certain instances, intrauterine tissues, to determine the likelihood that the fetus may have a genetic defect such as Down's Syndrome or a neural tube defect.

Under sections 124977, 125000, and 125055 of the Code, the Department has authority to determine and charge fees to cover the costs related to testing for ge-

netic disorders. Pursuant to this authority, the Department promulgated section 6540, which establishes fees for such testing, into Title 17 of the California Code of Regulations.

Purpose of the \$7 Fee Increase: The Department now adopts an emergency amendment to section 6540 to increase one of the two fees established by this regulation. The \$155 fee in existing section 6540 is applicable when two or more constituents (called “markers”) of the mother’s blood are tested to determine the likelihood that her newborn will have a genetic disease such as Down’s Syndrome or a neural tube defect. This fee covers the testing of the alpha-fetoprotein blood marker, and up to 4 additional blood markers: Inhibin A, unconjugated estriol, human chorionic gonadotropin, and pregnancy-associated plasma protein A. This \$155 fee also covers certain diagnostic tests, such as amniocentesis or chorionic villus testing, if deemed by the Department to be medically necessary. If medically necessary, some kinds of ultrasound testing — but not including nuchal translucency testing — may also be covered by this fee.

The emergency amendment to section 6540 provides for a \$7 fee increase from \$155 to \$162. The purpose of this fee increase is to cover the increased costs of the Departmental administrative and operational functions required to maintain the Department’s programs for the testing of genetic diseases. Such functions include the printing of brochures and guides on genetic disease testing for patients and health-care providers, and the monitoring of testing facilities to ensure quality control. The Department’s authority to include such costs in the fee for testing for genetic disease is provided under section 124977 of the Code.

Authority: Sections 124977, 124996, 125000(h), 125055, 125070 and 131200, Health and Safety Code.

Reference: Sections 124996, 125000(b) and (f), 125001, 125050, 125060, 125065 and 131052, Health and Safety Code.

transportation services provided to Medi-Cal beneficiaries. The Department of Health Care Services (DHCS) proposes to submit a State Plan Amendment (SPA) to the federal Centers for Medicare and Medicaid Services, to implement Medi-Cal supplemental payments and rate augmentations for air medical transportation services, pursuant to the provisions of the Emergency Medical Air Transportation Act, or “EMATA”, (Assembly Bill (AB) 2173, Beall, Chapter 547, Statutes of 2010).

Effective January 1, 2011, the EMATA requires the county courts to levy and collect an additional \$4 penalty on statewide vehicle violations, with the exception of parking offenses, for the purposes of providing payment and/or rate augmentations for Medi-Cal air medical transportation services. Each county deposits its penalty collections into the EMATA Fund, a State special fund, upon receipt of the penalty payment. The penalty collections are available to DHCS to adjust payments and/or rates to Medi-Cal air medical transportation service providers.

The EMATA will be implemented using a two-phased approach. In the initial phase, DHCS will provide at least one supplemental payment in Fiscal Year (FY) 2011–12 for Medi-Cal air medical transportation services provided to Medi-Cal beneficiaries from October 1, 2011 through June 30, 2012. Upon federal approval of the SPA, the supplemental payment(s) will be made using monies available in the EMATA Fund. Payments are anticipated to be completed by September 30, 2012.

Effective July 1, 2012 and for each FY thereafter until January 1, 2018, the funds available in the EMATA Fund will be used by DHCS to provide for annual rate augmentations to air medical transportation rates. The annual rate augmentations will be provided for services provided in both the Medi-Cal Fee-for-Service and managed care programs.

This action will not impact the state General Fund.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HEALTH CARE SERVICES

REIMBURSEMENTS FOR MEDI-CAL AIR MEDICAL TRANSPORTATION SERVICES PURSUANT TO THE EMERGENCY MEDICAL AIR TRANSPORTATION ACT

This notice provides information of public interest with respect to the supplemental payment and rate augmentations that are proposed for Medi-Cal air medical

PUBLIC REVIEW AND COMMENTS

The California statutes discussed above are available for public review at welfare offices in every county of the State. Written comments (or requests for copies of statutes and/or copies of the written comments) may be submitted within 45 days of the publication date of this notice to:

Linda Machado, Chief, Provider Rate Section
Medi-Cal Benefits, Waiver Analysis, and Rates
Division
Department of Health Care Services; MS 4600
P.O. Box 997417
Sacramento, CA 95899–7417

FAIR POLITICAL PRACTICES COMMISSION

NOTICE OF CHANGE OF HEARING LOCATION

Concerning Proposed Regulations on Text Message Contributions Title 2, Section 18421.31, California Code of Regulations

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the "Commission"), under the authority vested in it under the Political Reform Act (the "Act") by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations.

In the California Regulatory Notice Register published September 9, 2011 (Register 2011, No. 36-Z, page 1455), the Commission published a Notice of Proposed Rulemaking concerning Text Message Contributions. The notice included mention of a hearing.

Please be informed that the hearing location has been changed.

The Commission will now consider the proposed regulation at a public hearing on **October 13, 2011**, at the **Los Angeles County Board of Supervisor's Hearing Room, 500 West Temple Street, Room 381 B, Los Angeles, California, 90012**, commencing at approximately **10:00 a.m.**

Written comments must be received at the Commission offices no later than **5:00 p.m. on October 11, 2011**.

If you have any questions, please contact Virginia Latteri-Lopez, Staff Services Analyst, at (916) 322-5660 or vlatteri-lopez@fppc.ca.gov.

STATE LANDS COMMISSION

Notice of Extension of Public Comment Period

Interested Parties:

The California Regulatory Notice Register 2011, No. 37-Z, dated September 16, 2011 indicated that the California State Lands Commission is proposing a regulation that would amend Article 4.8 Biofouling Management Regulations for Vessels Operating in California Waters.

The California State Lands Commission will extend the public comment period for this proposed regulation to 66 days. This extended comment period will close at 5:00 p.m. on November 21, 2011. The original Notice of Proposed Regulatory Action specified a 45-day comment period.

All written comments must be received at the Commission by 5:00 p.m. on November 21, 2011. Written comments should be submitted to:

California State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 200
Long Beach, CA 90802-4335
Attn: Ravindra Varma

Written comments may also be submitted by facsimile to: (562) 499-6317, attention: Ravindra Varma or by email to varmar@slc.ca.gov.

Materials regarding the proposed rulemaking can be found at: http://www.slc.ca.gov/Spec_Pub/MFD/Ballast_Water/Ballast_Water_Default.html.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES September 30, 2011

OCTOBER 12 AND 13, 2011 MEETING OF THE CARCINOGEN IDENTIFICATION COMMITTEE

(NOTE: Posted on the OEHHA web site on
September 23, 2011)

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65; Health and Safety Code Section 25249.8 et seq.).

The Carcinogen Identification Committee of OEHHA's Science Advisory Board identifies chemicals for addition to the Proposition 65 list: The Committee serves as the "State's qualified experts" for determining whether a chemical has been clearly shown, through scientifically valid testing according to generally accepted principles, to cause cancer.

A public meeting of this committee will be held on **Wednesday and Thursday, October 12 and 13, 2011** at the California Environmental Protection Agency

Headquarters Building, *Sierra Hearing Room*, at 1001 I Street, Sacramento, California. Each day of the meeting will begin at 10:00 a.m. and will last until 5:00 p.m. or until all business is conducted. Committee items that are not completed on October 12 will be heard on October 13. In the event that all Committee business is completed on October 12, there will be no meeting on October 13.

This meeting will be webcast: The URL for the webcast (not active until the day and time of the meeting) is: <http://calepa.ca.gov/Broadcast/>.

If you have special accommodation or language needs, please contact Cynthia Oshita at (916) 445-6900 or cynthia.oshita@oehha.ca.gov by October 5, 2011. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

The tentative agenda for this meeting is given below. The order of items on the agenda is provided for general reference only. The order in which items are taken up by the Committee is subject to change at the discretion of the Chair.

I. WELCOME AND OPENING REMARKS

II. CONSIDERATION OF CHEMICALS AS KNOWN TO THE STATE TO CAUSE CANCER

A. Tris(1,3-dichloro-2-propyl)phosphate

- Staff presentation
- Committee discussion
- Public comments
- Committee discussion and decision

B. Fluoride and its salts

- Staff presentation
- Department of Public Health presentation
- Committee discussion
- Public comments
- Committee discussion and decision

III. PRIORITIZATION OF CHEMICALS FOR CARCINOGEN IDENTIFICATION COMMITTEE REVIEW

- Staff presentation
- Committee members discuss and propose priority rankings for each chemical
- Committee discussion
- Public comments
- Committee discussion and recommendations

IV. PROCEDURES FOR PRESENTATION OF PUBLIC COMMENTS, COMMITTEE DISCUSSIONS, AND COMMITTEE VOTES DURING MEETINGS

V. STAFF UPDATES

VI. SUMMARY OF COMMITTEE ACTIONS

DECISION NOT TO PROCEED

DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE OF DECISION NOT TO PROCEED

(Pursuant to Government Code section 11347)

On September 2, 2011, the California Department of Food and Agriculture (CDFA) published a Notice of Proposed Rulemaking concerning "Schedule of Charges, Phytosanitary Certification." The proposed action would have established a six-dollar service charge payable to CDFA for each federal or State phytosanitary certificate and "master permit" certificate issued in California.

The CDFA has requested additional information from the California County Agricultural Commissioners to ensure it has the most accurate information available to it for determining the appropriate service charge. Once CDFA has this information and can reevaluate it, the Department will again submit a Notice of Proposed Rulemaking with any necessary changes incorporated into it.

Pursuant to Government Code section 11347, CDFA hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register (Register 2011, No. 35-Z, September 2, 2011, OAL File no. Z-2011-0823-10).

Any interested person with questions concerning this rulemaking should contact Stephen S. Brown at 916.654.1017 or sbrown@cdfa.ca.gov.

The CDFA will also publish this Notice of Decision Not to Proceed on its website:

<http://www.cdfa.ca.gov/plant/Regulations.html>

RULEMAKING PETITION DECISION

STATE ALLOCATION BOARD

[Due to editorial considerations, only the agency's decision is being published. For questions concerning

the attachments, please contact Lisa Jones at (916) 376-1753 or via e-mail at lisa.jones@dgs.ca.gov].

September 16, 2011

Shawn Atlow, Director
Facilities Legislation, Grants and Funding
Los Angeles Unified School District — Facilities
Division
333 S. Beaudry Ave., 21st Floor
Los Angeles, CA 90017

**Re: Request for Review and Repeal of an
Un-numbered Regulation**

Dear Ms Atlow:

The Office of Public School Construction (OPSC) has received the Los Angeles Unified School District's (District) request for a hearing to review the appropriateness of one of the regulations adopted by the State Allocation Board (SAB). Specifically, the District cites the Application for Funding SAB Form 50-04 requirement that an appropriate design professional certify that the estimated construction cost for work included in the plans and specifications of a project is equal to or greater than 60 percent of the combined state and required local contribution for the project. The District indicated its belief that the 60 Percent Commensurate Cap on Low Cost Projects (the 60 percent rule) does not meet the requirements of the Administrative Procedures Act (APA). The District also indicated that the legislature intended for school districts to generate project savings and that the 60 percent rule is inconsistent with School Facilities Program provisions that allow local educational agencies to retain those savings for other capital outlay projects. Lastly, the District indicated that the 60 percent rule prevents local educational agencies from requesting all of the funding that they would otherwise be eligible to receive.

The District's request for a hearing on this matter is respectfully denied for the following reasons:

1) The rule was adopted in accordance with the APA.

The SAB adopted the 60 percent rule in accordance with all of the requirements of the APA in June 1999. Government Code section 15503 and Education Code section 17070.35 clearly provide the SAB with the authority to adopt regulations and create forms for the administration of the Leroy F. Greene School Facilities Act of 1998 (Greene Act). The 60 percent rule was adopted in accordance with the APA and the rulemaking record includes appropriate statutory citations. The Greene Act requires local educational agencies seeking state funds to provide a local matching share of state funds provided for SAB approved projects (see Ed. Code §§ 17072.30(a) and 17074.16). The Final Statement of Reasons for the rule, published by the Office of Administrative Law in the California Regulatory No-

tice Register, states that the SAB adopted the rule to prevent local educational agencies from receiving excessive amounts of project savings that local educational agencies could then apply toward projects that would otherwise not be eligible under the Greene Act (see the attached Final Statement of Reasons). The SAB instructed OPSC staff to file the amended form on an emergency rulemaking basis, thus quickly clarifying the intent of the law regarding grant apportionments and the use of project savings. The 60 percent rule clarifies specific statutory requirements of the Greene Act.

2) The Rule is consistent with the Greene Act.

The Greene Act provides the following:

Any savings achieved by the district's *efficient and prudent expenditure of these funds* shall be retained by the district in the county fund for expenditure by the district for other high priority capital outlay purposes. (Ed. Code § 17070.63 (c).) (Emphasis added.)

The Final Statement of Reasons cites examples of projects where local educational agencies used savings contrary to the requirements of the Greene Act. Project plans are required to include or exclude certain facilities requirements. By eliminating various aspects of an approved plan, local educational agencies can create "artificial savings." Project savings are then used to fund other local capital projects that are otherwise not eligible under the Greene Act. The Statement provides an example of a local educational agency using state funds to buy relocatable classrooms it had previously been leasing. This reduced the cost and enabled the local educational agency to receive considerably more state funding than the local educational agency would otherwise receive.

The 60 percent rule clarifies the appropriate use of state funds. The Education Code does allow local educational agencies to retain savings, but only those generated by the local educational agencies "efficient and prudent expenditure" of funds. The examples provided in the Statement of Reason illustrate that the Rule distinguishes what is *not* considered efficient and prudent expenditures of the funds. By requiring architects to certify that construction costs will amount to at least 60 percent of the project costs, the SAB reinforces the requirement that the funds only be used in accordance with the Greene Act and that savings are generated only by efficient and prudent local decisions.

3) The SAB has already provided a hearing regarding the 60 percent rule.

The District has previously challenged the 60 percent rule and the SAB provided the District with a hearing on the matter. OPSC received a School District Appeal Request SAB Form 189, signed May 23, 2007, from the District that challenged the 60 percent rule (See at-

tached SAB Form 189.). The written appeal stated the District's request that the SAB review the 60 percent rule, stating that the 60 percent rule is "without basis in law or regulation". The SAB heard the District's appeal during the regularly scheduled SAB meetings on September 24, 2008 and on October 29, 2008. The District had an opportunity to present its opposition to the rule and petition the SAB to repeal it. The SAB considered the District's arguments and rejected the District's appeal.

This letter, along with the attached documents, will serve as a written denial of your request for the review and repeal of the regulation. This letter will also be forwarded to the Office of Administrative Law for publication in the California Regulatory Notice Registry.

Please feel free to contact me if you have any further questions.

Sincerely,

/s/
Lisa Silverman
Acting Executive Officer
State Allocation Board

Attachments

cc: Pedro Reyes, Chair, State Allocation Board
Office of Administrative Law

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2011-0825-04
AIR RESOURCES BOARD
Periodic Smoke Inspection Program 2010

In this rulemaking action, the Air Resources Board is amending title 13, California Code of Regulations, sec-

tion 2190 to exempt specified diesel vehicles subject to the AB 1488 (Stats. 2007, ch. 739) biennial smog check inspections from the requirement to conduct annual periodic smoke inspection tests, thereby eliminating these duplicative emissions testing requirements and saving the affected industry several million dollars in emission testing costs with little or no impact to air quality.

Title 13
California Code of Regulations
AMEND: 2190
Filed 09/15/2011
Effective 10/15/2011
Agency Contact: Trini Balcazar (916) 445-9564

File# 2011-0812-08
BOARD OF PHARMACY
Pharmacy and Wholesalers; Self-Assessment Forms

The California Board of Pharmacy (Board) amended sections 1715, 1735.2, 1751, and 1784 of title 16 of the California Code of Regulations to revise self assessment forms for pharmacies, wholesalers, compounding pharmacies, and pharmacies compounding sterile injectable drug products.

Title 16
California Code of Regulations
AMEND: 1715, 1735.2, 1751, 1784
Filed 09/19/2011
Effective 10/19/2011
Agency Contact: Carolyn Klein (916) 574-7913

File# 2011-0805-14
BUREAU FOR PRIVATE POSTSECONDARY
EDUCATION
Citations and Fines: Annual Reports; Emergency Decisions

This rulemaking action addresses uniform data reporting, compliance inspections, the format and method by which to file the required Annual Report, the issuance of emergency decisions under the relevant provisions of the Administrative Procedure Act, and the process for the Bureau to issue administrative citations and fines against private postsecondary institutions that have violated provisions of the California Private Postsecondary Education Act or its regulations or against persons operating private postsecondary educational establishments without Bureau approval to do so under the Act, as well as related due process and administrative appeal provisions.

Title 5
California Code of Regulations
ADOPT: 74112, 75020, 75030, 75040, 75050,
75150, 75200, 75210 AMEND: 74110
Filed 09/19/2011
Effective 10/19/2011
Agency Contact: Joanne Wenzel (916) 384-1254

File# 2011-0812-04
**CALIFORNIA GAMBLING CONTROL
COMMISSION**
Conflict-Of-Interest Code

The California Gambling Control Commission is amending its conflict-of-interest code found at title 4, section 12590, California Code of Regulations. The amendment was approved for filing by the Fair Political Practices Commission on July 22, 2011.

Title 4
California Code of Regulations
AMEND: 12590
Filed 09/20/2011
Effective 10/20/2011
Agency Contact: Pam Ramsay (916) 263-8111

File# 2011-0909-01
CALIFORNIA STUDENT AID COMMISSION
Cal Grant Program & Mandatory Systemwide Fees

This is the first re-adopt of the California Student Aid Commission's adoption of section 30001.5 in Title 5 of the California Code of Regulations which established that "tuition" and/or "tuition fees" are considered to be among the mandatory systemwide fees which are eligible for coverage by a Cal Grant award at the University of California and the California State University system.

Title 5
California Code of Regulations
ADOPT: 30001.5
Filed 09/19/2011
Effective 09/19/2011
Agency Contact:
Kristen Trimarche (916) 464-6439

File# 2011-0909-02
DEPARTMENT OF DEVELOPMENTAL SERVICES
Add Service Code 616 (Behavior Management Technician Paraprofessional)

This regulatory action addresses the use of para-professionals in group practice provider behavioral intervention services and establishes a service code, educational/experiential qualifications and professional supervision requirements for this newly designated service provider.

Title 17
California Code of Regulations
AMEND: 54342, 57332
Filed 09/19/2011
Effective 09/19/2011
Agency Contact:
JoEllen Fletcher (916) 654-2133

File# 2011-0825-05
DEPARTMENT OF DEVELOPMENTAL SERVICES
Waiver Requirements for Facilities

The Department of Developmental Services amended section 56034 of title 17 of the California Code of Regulations to correct a cross reference to competency-based training requirements in the Welfare and Institutions Code.

Title 17
California Code of Regulations
AMEND: 56034
Filed 09/21/2011
Agency Contact:
Diana Nicolaou (916) 654-1760

File# 2011-0915-03
DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Interior Quarantine

The Department of Food and Agriculture submitted this emergency action to amend title 3, California Code of Regulations, section 3423. The amendment establishes a quarantine area surrounding the Stockton area of San Joaquin County for the Oriental fruit fly, *Bactrocera dorsalis*, based on eight recent detections of the insect between September 8 - 15, 2011. The area will encompass approximately 118 square miles. The effect of the change is to provide authority for the State to regulate movement of hosts of Oriental fruit fly from, into, and within this area to prevent the artificial, human-assisted spread of the fly to noninfested areas to protect the public and California's agricultural industry.

Title 3
California Code of Regulations
AMEND: 3423(b)
Filed 09/19/2011
Effective 09/19/2011
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2011-0914-03
DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Eradication Area

This emergency action adds San Joaquin County to the eradication areas for the Oriental Fruit Fly (*Bactrocera dorsalis*) due to the detection of numerous pests in the county. Immediate eradication measures are necessary to stop the expansion and infestation.

Title 3
California Code of Regulations
AMEND: 3591.2(a)
Filed 09/15/2011
Effective 09/15/2011
Agency Contact: Lindsay Rains (916) 654-1017

File# 2011-0805-13
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
MH-Update Construction Standards for CM&SPCM

In this rulemaking action, the Department of Housing and Community Development made comprehensive modifications to existing Title 25 regulations to comply with SB 538 (Stats. 2007, ch. 540) and to provide general cleanup of Title 25 regulations that govern commercial modulars and special purpose commercial modulars, other than mobile food facilities. Specifically, most existing Title 25 standards pertaining to the construction, alteration, or conversion of commercial modulars have been repealed and replaced with existing, corresponding Title 24 building standards, by incorporating by reference the Title 24 building standards. Existing Title 25 standards that are not addressed by Title 24 building standards have been retained or amended.

Title 25
California Code of Regulations
ADOPT: 4356.1, 4516.1, 4516.3, 4516.7, 4516.9, 4517.1, 4517.2, 4517.4, 4517.6, 4519.1, 4520, 4520.1, 4520.2, 4521, 4522.1, 4522.2, 4522.3, 4522.4, 4522.5, 4522.6, 4522.7, 4522.8, 4523, 4523.1, 4523.2, 4523.3, 4526 AMEND: 4000, 4004, 4005, 4010.5, 4019, 4350, 4353, 4356, 4358, 4358.3, 4363, 4365, 4368, 4369.5, 4380, 4381, 4383, 4387, 4389, 4391, 4394, 4396, 4397, 4402, 4404, 4414, 4415, 4473, 4495, 4514, 4515, 4516, 4516.5, 4517, 4517.3, 4517.5, 4518, 4519, 4522, 4525, 4527, 4528, 4529, 4530, 4531, 4532, 4533, 4534, 4876 REPEAL: 4354, 4357, 4357.5, 4359, 4360, 4360.2, 4360.4, 4360.6, 4360.7, 4360.8, 4361, 4361.3, 4362.5, 4363.3, 4363.4, 4363.6, 4364, 4369, 4370, 4371, 4372, 4374, 4376, 4379, 4384, 4385, 4407, 4409, 4420, 4421, 4422, 4423, 4424, 4425, 4426, 4428, 4429, 4430, 4431, 4434, 4435, 4436, 4437, 4438, 4439, 4440, 4441, 4442, 4443, 4444, 4445, 4446, 4450, 4451, 4452, 4453, 4455, 4456, 4457, 4458, 4459, 4460, 4461, 4463, 4464, 4465, 4468, 4469, 4470, 4471, 4474, 4475, 4475.2, 4475.5, 4475.7, 4476, 4476.5, 4477, 4478, 4479, 4480, 4481, 4482, 4483, 4484, 4485, 4486, 4492, 4493, 4494, 4496, 4497, 4498, 4498.5, 4500, 4501.7, 4505, 4506, 4517.7, 4535, 4536
Filed 09/19/2011

Effective 10/19/2011
Agency Contact: Keisha Harris (916) 322-1473

File# 2011-0808-01
DEPARTMENT OF INDUSTRIAL RELATIONS
Self Insurance Group Regulations

This rulemaking action updates regulations related to groups of employers that join together to self-insure for purposes of workers' compensation insurance coverage. The rulemaking action changes who the custodian of a Certificate of Deposit, given as a security, may be, and it expands the list of institutions that can issue these CDs. The rulemaking allows employers to report employment and wage data other than by using Employment Development Department forms. Among other things, the rulemaking also allows files which were previously required to be kept by employers in paper form to be stored electronically.

Title 8
California Code of Regulations
AMEND: 15201, 15214, 15251, 15300, 15400.2, 15405, 15430.1, 15478, 15481, 15484
Filed 09/19/2011
Effective 10/19/2011
Agency Contact: Jon Wroten (916) 263-2803

File# 2011-0804-03
EMPLOYMENT DEVELOPMENT DEPARTMENT
Identity and Wage Verification for State Disability Insurance Benefits

This action amends two regulations and adopts one regulation within provisions in Title 22 of the California Code of Regulations (CCR) governing the State Disability Insurance (SDI) program to provide the Employment Development Department (Department) with a mechanism to request additional documentation regarding a claimant's identity or wages if the Department suspects the claimant's wages may have been earned by someone other than the claimant.

Title 22
California Code of Regulations
ADOPT: 2706-8 AMEND: 2706-1, 2706-2
Filed 09/16/2011
Effective 10/16/2011
Agency Contact:
Estela Gallawa (916) 654-8410

File# 2011-0804-02
SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
San Francisco Bay Plan, Suisun Marsh Protection Plan

This regulatory action by the San Francisco Bay Conservation and Development Commission (BCDC) revises San Francisco Bay Plan Map no. 3 and BCDC

Resolution 16 to reflect the deletion of a 2,400-acre portion of the water-related industrial priority use area at Collinsville in Solano County. This action also amends the Suisun Marsh Protection Plan findings and policies for water-related industry and the Suisun Marsh Protection Plan maps to reflect the same reduction in size of the priority use area.

Title 14
California Code of Regulations
AMEND: 11900, 11970
Filed 09/16/2011
Effective 09/16/2011
Agency Contact: Timothy Doherty (415) 352-3667

File# 2011-0810-02
STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998; CSFP and COS Advance Funds

This certificate of compliance makes permanent the prior emergency regulatory action (OAL file no. 2011-0422-09E) that expanded the types of projects eligible to participate in priority funding round procedures established by the State Allocation Board for school districts with construction-ready approved but unfunded projects to apply for State funds as the funds become available. Charter School Facility Program (CSFP) projects may apply for advance release of design and site acquisition funds and Critically Overcrowded School Facilities Program projects may apply for advance release of environmental hardship site acquisition funds. In addition, the prior emergency action provided a 180-calendar-day timeline for fund release requests for CSFP advance site acquisition funds.

Title 2
California Code of Regulations
AMEND: 1859.90.2
Filed 09/21/2011
Effective 09/21/2011
Agency Contact: Robert Young (916) 375-5939

File# 2011-0804-01
STATE WATER RESOURCES CONTROL BOARD
Control of Methylmercury and Total Mercury in the Delta

This action is the State Water Resources Control Board's approval of the Central Valley Regional Water Quality Control Board's adoption of Resolution No. R5-2010-0043 on April 22, 2010 that amended the Basin Plan to include a program for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary. The Delta is impaired due to elevated levels of methylmercury in fish tissue. To address

the impairment, the Basin Plan amendments establish site-specific methylmercury fish tissue objectives and a program to reduce mercury levels through a phased, adaptive management approach. The Basin Plan amendments include methylmercury load and waste load allocations for numerous nonpoint sources and point source dischargers.

Title 23
California Code of Regulations
ADOPT: 3945.2
Filed 09/15/2011
Effective 10/15/2011
Agency Contact: Patrick Morris (916) 464-4621

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN April 27, 2011 TO
September 21, 2011**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

09/21/11 AMEND: 1859.90.2
09/08/11 AMEND: 1859.2, 1859.82
09/07/11 ADOPT: 10000, 10001, 10002, 10003, 10004, 10005, 10006, 10007, 10008, 10009, 10010, 10011, 10012, 10013, 10014, 10015, 10016, 10017, 10018, 10019, 10020, 10021, 10022, 10023, 10024, 10025, 10026, 10027, 10028, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037, 10038, 10039, 10040, 10041, 10042, 10043, 10044, 10045, 10046, 10047, 10048, 10049, 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060, 10061, 10062, 10063, 10064, 10065, 10066
09/06/11 AMEND: 29000
09/01/11 ADOPT: 58600 REPEAL: 58600
09/01/11 AMEND: 54200
09/01/11 AMEND: 54600
08/08/11 ADOPT: 59700
07/27/11 AMEND: 1859.90.2, 1859.81
07/15/11 AMEND: 1151, 1153, 1155.500, 1165, 1170, 1172.20
07/11/11 ADOPT: 21903.5 AMEND: 21903

07/11/11 ADOPT: 570.5 AMEND: 571(b)
 07/06/11 AMEND: 1859.2, 1859.81, 1859.148.2,
 1859.166.2
 07/06/11 AMEND: 18360
 07/05/11 AMEND: 649.3, 649.18, 649.20, 649.24
 06/30/11 AMEND: 633.9
 06/21/11 REPEAL: 59152
 06/07/11 AMEND: 640
 05/12/11 AMEND: 1859.83
 05/04/11 ADOPT: 1190, 1190.01, 1190.02,
 1190.03, 1190.04, 1190.05 AMEND:
 1181.1, 1181.2
 04/28/11 AMEND: 18427.1
 04/28/11 AMEND: 1859.90.2
 04/27/11 AMEND: 1859.76

Title 3

09/19/11 AMEND: 3423(b)
 09/15/11 AMEND: 3591.2(a)
 09/07/11 AMEND: 3591.2(a)
 08/23/11 ADOPT: 6131 AMEND: 6128, 6130
 08/23/11 ADOPT: 1392.4.1 AMEND: 1392,
 1392.1, 1392.2, 1392.4, 1392.6,
 1392.8.1, 1392.9, 1392.11
 08/03/11 AMEND: 3437(b)
 07/28/11 REPEAL: 1400.9.1
 07/15/11 AMEND: 3434(b)
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